

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Cryptography Research, Inc.,

NO. C 04-04143 JW

Plaintiff,

**ORDER APPOINTING SPECIAL
MASTER**

v.

Visa International Service Assoc.,

Defendant.

On January 23, 2008, the Court issued a Notice of Intent to Appoint Special Master based on its conversation with the parties at the January 15, 2008 case management conference. (See Docket Item No. 419.) On January 31, 2008, the parties filed their Joint Response to the Court's proposed order of appointment of Tom Denver as Special Master. (See Docket Item No. 422.)

In their Joint Response, the parties request that the Court limit its appointment of the Special Master to discovery matters only. In light of the parties' consent of appointment and specific request to limit the scope of appointment, the Court appoints Mr. Denver as Special Master for this case. The contours of Mr. Denver's responsibilities, as modified from the Court's January 23 Order, are as follows:

A. Scope of the Special Master's Appointment

The Special Master shall preside over all proceedings, with the power to hear and make reports and recommendations on the following pretrial matters:

1. Timing of pre-answer motions or any responsive pleadings;
2. Timing and content of initial disclosures;
3. Case development processes (e.g., staged discovery and discovery schedules or plans);
4. Disclosures and discovery;
5. Disclosure or discovery disputes;
6. Limits on the number of party experts.

Furthermore, the Special Master shall have the authority to:

1. Conduct pretrial conferences and hearings to establish:
 - (a) The substance of the claims and defenses presented in the case and of the issues to be decided;
 - (b) The material facts not reasonably disputable;
 - (c) The disputed material factual issues;
 - (d) The relief claimed, including a particularized itemization of all elements of damages which may reasonably be claimed based upon the evidence which would be presented at trial;
 - (e) The pertinent undisputed and disputed points of law, with respect to liability and relief, including proposed jury instructions;
 - (f) The witnesses necessary to be called at trial, except for impeachment or rebuttal, together with the substance of the testimony to be given;
 - (g) A compilation of all documents and other items necessary to be offered as exhibits at trial, except for impeachment or rebuttal, together with a brief statement following each item describing its substance or purpose and the identity of the authenticating witness;
2. Audit and establish attorney fees to be awarded, if any.

The Special Master shall exercise the power necessary or proper to regulate all proceedings before him and shall do all acts and take all measures necessary or proper for the efficient performance of his duties under this Order.

1 The Special Master shall file numbered interim reports or recommendations which: 1)
2 advise this Court of the status of the case, and 2) recommend the disposition of any matter heard by
3 him. The parties shall have ten (10) days from the date an interim report or recommendation is filed
4 to file any objections. Any party opposing the objection(s) shall file an opposition within ten (10)
5 days after the objection is filed. If no objection is filed, the Special Master's report or
6 recommendation shall become a binding Order of the Court and the parties shall comply with the
7 Order. If, however, an objection is filed, the matter shall be deemed submitted to the Court without
8 oral argument twenty (20) days after the Special Master's report or recommendation is filed--unless
9 an application is made and the Court orders the matter to be scheduled for hearing.

10 Reports or recommendations pertaining to non-dispositive motions or pretrial discovery
11 matters shall be reconsidered by this Court only where the Special Master's report or
12 recommendation is clearly erroneous or contrary to law.

13 **B. Fees and Costs of Special Master**

14 Unless the Court receives a recommendation from the Special Master for some other
15 apportionment, each party shall bear the cost of the Special Master on a per capita basis, payable in
16 advance. The Special Master shall report to the Court on a periodic basis regarding the state of his
17 fees and expenses. Unless otherwise ordered, the Special Master shall, in his report, advise the
18 Court, without specifically identifying parties, as to whether the parties are current in their payment
19 of his fees and expenses.

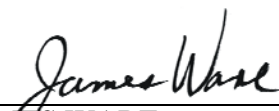
20 **C. Motions Pending Before Magistrate Judge Lloyd**

21 The parties shall refer all pending discovery motions before Judge Lloyd to the Special
22 Master.

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1 Mr. Denver shall file an affidavit as required by FED. R. CIV. P. 53(b)(3). The Court's
2 appointment of Mr. Denver as Special Master is effective as of the date of this Order. The parties
3 shall notice all relevant discovery motions before the Special Master and not the assigned Magistrate
4 Judge Howard Lloyd.

5
6 Dated: February 12, 2008



JAMES WARE
United States District Judge

1 THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

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26 Dated: February 12, 2008

Richard W. Wieking, Clerk

27 By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy